IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1502/1996

Rakesh. vs. The Collector, Banswara and others.

Date : 22.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.RK Purohit a/w Mr.R Mehta, for the petitioner.

Mr.VD Dadich for Mr.NM Lodha) for the respondents.
Ms.Aruna Negi for Mr.PR Mehta)

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BY THE COURT :

Heard learned counsel for the parties.

A piece of land was allotted to the respondent no.5 vide resolution dated 1.11.1994 passed by City Monitoring Committee, Banswara under the chairmanship of District Collector, Banswara which was challenged by preferring revision petition before the Director, Local Self Government, Jaipur under Section 300 of the Rajasthan Municipalities Act, 1959 (for short 'the Act of 1959') by petitioner Rakesh and which was dismissed

by the order dated 15.4.1996. Hence, the petitioner has preferred this writ petition to challenge the order dated 15.4.1996 of the Director, Local Bodies, resolution dated 1.11.1994, notice conveying the respondent no.5's husband – allottee about allotment of the land to the respondent no.5's husband vide letter dated 19.1.1995 and the allotment letter dated 3.8.1995 issued in the name of respondent no.5 – wife of the original allottee.

Brief facts of the case are that according to the petitioner, a piece of land measuring 40 feet x 60 feet is situated near the old bus stand at Banswara. Said piece of land was belonging to one Gokulji. Petitioner's grand father late Ramdasji purchased the said plot from Gokulji vide registered sale deed dated 14.10.1968. Gokulji was the owner of the property by virtue of patta dated 3.1.1961. The petitioner has placed the copy of patta of Gokulji dated 3.1.1961 as Annex.1A and copy of sale deed executed in favour of petitioner's grand father dated 14.10.1968 as Annex.1. According to the petitioner, respondent no.5's husband Gafoor was tenant in part of the property of Gokulji before the property was purchased by Ramdasji. Though said Gafoor was tenant of the petitioner's predecessor in title, got the said land measuring 40' x 13' allotted despite the fact that the petitioner was

entitled to purchase the land being owner of the adjoining property to the plot in dispute which was given to said Gafoor.

According to learned counsel for the petitioner, the petitioner's grand mother Smt. Jamna Bai submitted an application for allotment of the land situated in the northern side of the house of the petitioner vide application dated 15.9.1986. In view of the above reason, the respondents had no jurisdiction to allot or regularise the land in question to the said applicant Gafoorji. According to the petitioner, for allotment of strip land, the procedure has been prescribed under the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (for short 'the Rules of 1974') and as per Rule 23, adjoining owner is only entitled to get the strip land on payment. In case, there are more than one aspirants, then the strip land could be auctioned. In the present case, since the petitioner was the only person entitled to get the strip land, therefore, the respondents should have allotted the land to the petitioner's grand mother Smt. Jamna Bai or to the petitioner being successor of Smt. Jamna Bai. The petitioner also placed on record copy of the written statement submitted by the respondent Municipal Board in a suit which was filed by Gafoorji against the Municipal Board for grant of injunction. With the help of copy of this written statement, the petitioner

submitted that the Municipal Board in the written statement clearly admitted that Gafoorji was tenant in the property of Gokulji and he encroached upon some other adjoining land also. However, in the said suit, Municipal Board and Gafoorji entered into compromise and the Municipal Board accepted Gafoorji as tenant of the Municipal Board. The petitioner has placed on record copy of the application dated 19.8.1977, on the basis of which Gafoorji's suit was decided by the civil court. In view of the above reason, according to learned counsel for the petitioner, applicant Gafoorji had no right to get the land allotted as strip land because he was not owner of the land adjoining land in dispute and it was admitted that Gokulji was owner.

Learned counsel for the petitioner vehemently submitted that the petitioner's revision petition was wrongly dismissed on the ground of delay or on the ground of bar of limitation. It is submitted that the resolution was passed by the Municipal Board on 1.11.1994 and the allotment letter was issued to the respondent no.5 on 3.8.1995 and the petitioner without any delay submitted the revision petition before the State Government under Section 300. No limitation has been prescribed for revision petition and, therefore, the State Government committed error of law by holding that the revision petition is barred by time and further even if the revision could have been dismissed

because of some delay, then also, there was virtually no delay in preferring the revision petition by the petitioner before the State.

On merits, learned counsel for the petitioner submitted that the Rules have been violated not only while taking the decision for allotment of the land to Gafoorji but Gafoorji or his successors did not comply with the conditions of the allotment and, therefore also, the allotment should have been set aside by the revisional authority. It is submitted that it is admitted case that the amount as demanded by the Municipal Board vide Annex.5 dated 19.1.1995 has not been deposited in time. Not only this, even approval was not obtained by the respondents for sale of land as required under Rule 23 of the Rules of 1974.

Learned counsel for the respondent no.5 submitted that the land in question was in possession of Gafoorji was admitted fact. His possession was old and much prior to the purchase of the property by the petitioner. It is also admitted case that in civil suit, the Municipal Board accepted Gafoorji to be tenant of the Municipal Board as back as in the year 1977. Gafoorji continued to be in possession of the land in question after 1977 as tenant of the Municipal Board till the year 1994 when the piece of land was allotted to Gafoorji. It is also submitted that

Municipal Board's title is not under challenge. The respondent no.5 is not in possession of the property of the petitioner. The land was available for allotment is admitted case in view of the contention of the petitioners that they themselves applied for allotment of the land. It is submitted that the land has not been allotted as strip land under Rule 23 of the Rules of 1974 but has been allotted to the respondents in pursuance of the decision taken by the State Government for grant of lease to the existing tenants vide order dated 10.3.1983 whereby it has been decided that the land or the property leased out for short term to the tenant may be given to them on lease hold rights basis for 99 years. In view of the above, according to learned counsel for the respondents, Rule 23 itself has been wrongly applied by the petitioner in the present case.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It is not in dispute that the petitioner's grand father might have purchased the land measuring 40 feet x 60 feet situated near Bus Stand, Banswara. It is not in dispute that the land in north side of the petitioner's property could have been allotted by the respondents as it was municipal land and the petitioner

also sought its allotment from Municipal Board. The contention of the petitioner that the land could have been allotted as strip land under Rule 23 only appears to be incorrect in view of the fact that the land was not in actual physical possession of Municipal Board when the decision was taken to grant lease for 99 years to the respondent no.5 and the respondent no.5 was not in occupation of the land as trespasser. After 1977, when the Municipal Board accepted the respondent no.5's husband as their tenant, then his right to occupy the land was accepted by the respondent Municipal Board itself. Admittedly, the petitioner had no right, title or interest over the property which was allotted to the respondent no.5. He sought only allotment of land as strip land. As stated above, in view of the facts mentioned above, it is clear that the respondent no.5 and her husband were not altogether stranger to the land in dispute but they were in occupation of the land since decades, the land was allotted to them by the Municipal Board. The State's power to grant lease for 99 years for the land which is in occupation of the tenant is not in dispute and the Government's order dated 10.3.1983 is not under challenge.

In view of the above reasons, it appears that even while deciding the revision petition of the petitioner vide order dated 15.4.1996, some material facts were

not considered though the revision petition was dismissed on other grounds. In these facts and circumstances, Rule 23 of the Rules of 1974 has no application and, therefore, I do not find any merit in this writ petition.

Consequently, this writ petition is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya